



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Issued by the Department of Transportation on **September 7, 2000**

NOTICE OF ACTION TAKEN - Docket OST-2000-7628

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

In the matter of the *U.S.-France Frequency Allocation Proceeding*

Summary

By Order 2000-7-13, we instituted this proceeding for allocation of 15 weekly frequencies and award of other related authorities for U.S.-France combination services. Eight frequencies are available now and seven become available April 1, 2001.¹

Applications

American Airlines, Inc. (American), Delta Air Lines, Inc. (Delta), and United Air Lines, Inc. (United), filed applications for the subject authority. American sought 14 weekly frequencies to operate a daily flight between San Jose, California, and Paris, France; and to add a second-daily flight between Chicago, Illinois, and Paris, France. Delta sought 14 weekly frequencies to expand its services in both the Atlanta-Paris and New York-Paris markets.² United sought seven weekly frequencies for services in the New York-Paris market, including the necessary underlying exemption authority to provide services on the route. In addition, United sought one of the five designations available for U.S. carrier services in the New York-Paris market.³

Each of the applicants submitted answers and replies to the other applications, and a number of the affected civic parties responded to the applications and pleadings in this proceeding.⁴

Subsequent Events

Subsequent to the completion of the procedural schedule in this case, United filed a motion to withdraw its frequency allocation request. United continues to pursue its request for exemption authority and designation so that it can serve the New York-Paris market under code-share arrangements with third-country carriers.⁵

American and Delta filed a joint answer to United's motion to withdraw. The two carriers state that they are now the only applicants remaining in the proceeding seeking frequency allocations; that each is prepared to accept an allocation of seven weekly

¹ The eight weekly frequencies available immediately were previously allocated to Tower Air, Inc., for services in the New York-Paris market. Tower ceased serving the market in February 2000, and the frequencies reverted automatically to the Department for reallocation (see Order 2000-7-13 at 5-6). The seven additional frequencies become available under the established annual capacity increases provided for under the U.S.-France aviation agreement. Effective April 2003, there are no capacity limits on U.S. and French airline operations in the U.S.-France market.

² On August 3, 2000, Delta filed a motion to withhold from public disclosure the unredacted version of its August 3, 2000, Reply in this proceeding. Delta states that its reply contains references to data from the Department's Origin & Destination (O & D) reports, and that in light of these references, it is required under the Department's reporting rules and procedural regulations to submit the unredacted version of its pleading under seal, accompanied by the motion under Rule 12. No answers were filed to the motion. By Notice dated August 25, 2000, we afforded all parties to this proceeding access to the documents under our standard affidavit procedures. We will grant Delta's motion for confidentiality (See Remarks).

³ Under the U.S.-France aviation agreement, only five U.S. carriers may be designated to serve the New York-Paris market. At present, four U.S. carriers hold a designation to serve the route (American; Delta; Continental Airlines, Inc.; and Trans World Airlines (TWA)). Tower previously held the fifth U.S. carrier designation, but subsequently ceased operations. As a result, its designation was placed at issue in this proceeding.

⁴ The respondents included the Port of Authority of New York and New Jersey; the City of San Jose, California and the San Jose International Airport; the San Jose Silicon Valley Chamber of Commerce; the City of Chicago; and the Georgia and Atlanta Parties.

⁵ By Notice dated August 25, 2000, we shortened the period for responsive pleadings to United's motion to withdraw. We established that answers would be due no later than August 30, with replies due no later than September 1, 2000.

frequencies (rather than the 14 originally requested); and that the allocations granted should afford the carriers the flexibility to use the frequencies at either or both of the cities proposed in their respective applications (San Jose and/or Chicago (ORD) for American, and Atlanta and/or New York (JFK) for Delta).⁶ Both carriers urge the Department to issue a final decision in the case promptly.⁷

No further pleadings were filed.

Applicant reps: Carl B. Nelson, Jr., for American (202) 496-5647, Robert E. Cohn for Delta (202) 663-8060, and Jeffrey A. Manley for United (202) 663-6670 DOT Analyst: Linda L. Lundell (202) 366-2336

DISPOSITION

XX Granted requests as amended, subject to conditions (See Remarks)

XX Granted all motions filed in this proceeding (See Remarks)

XX Terminated the proceeding instituted in Docket OST-2000-7628 (See Remarks)

The above action granting frequency allocations to American and Delta were effective when taken **September 7, 2000**, and will remain in effect indefinitely, subject to the conditions described below.⁸

The above action granting United exemption authority to serve the New York-Paris market was effective when taken **September 7, 2000**, and will remain in effect through **September 7, 2002**.

The above action granting United's motion to withdraw its request for frequency allocations in this proceeding; United's motion for leave to file an otherwise unauthorized document in this proceeding; and United's motion(s) for immediate action in this proceeding; was effective when taken **September 7, 2000**.

The above action granting Delta's motion to withhold from public disclosure certain of its information in this proceeding was effective when taken **September 7, 2000**.⁹

The above action terminating the proceeding instituted in Docket OST-2000-7628 was effective when taken **September 7, 2000**.

**Action taken by: Susan McDermott, Deputy Assistant Secretary
for Aviation and International Affairs**

XX The authority granted is consistent with the aviation agreement between the United States and France.

Except to the extent exempted or waived, the authority for each carrier is subject to the terms, conditions, and limitations indicated:

XX Each holder's certificates of public convenience and necessity

XX Standard Exemption Conditions (attached)

XX Statements of Authorization between United and authorized third-country carriers (as described below)

⁶ The carriers state that, given their proposed earliest startup dates (October 29, 2000, for Delta and April 1, 2001, for American), Delta should be allocated the frequencies available now and American the frequencies that become available April 1, 2001.

⁷ American and Delta hold the necessary underlying authority to serve the markets at issue. American holds authority to serve the subject markets pursuant to certificate authority on Route 602, reissued by Order 91-4-47, and amended by Orders 91-10-54, 93-7-5, 96-5-9, and 97-1-10. Delta holds authority to serve the subject markets pursuant to certificate authority on Route 616, issued by Order 91-10-33, and amended by Orders 93-4-3 and 98-4-3.

⁸ Delta's frequency allocation is granted for immediate use, and American's frequency allocation is granted for services commencing April 1, 2001.

⁹ Under Rule 12, the confidentiality determination here becomes effective five days after the action (effective) date indicated, above, unless a petition for reconsideration, or a statement of intent to seek judicial review, is filed before the effective date.

Conditions: Consistent with our standard practice, the frequency allocations granted are subject to the condition that they will expire automatically and the frequencies will revert automatically to the Department for reallocation if they are not used for a period of 90 days.¹⁰ The 90-day dormancy period will begin on October 29, 2000, for Delta and April 1, 2001, for American, the dates on which the carriers plan to begin their proposed services, or the date on which the carrier begins service, whichever occurs earlier.

The frequency allocations granted are limited to services in the markets proposed by the carriers in their respective applications (San Jose and Chicago for American, and New York and Atlanta for Delta).

The exemption authority granted to United is subject to the condition that any third-country code-share services conducted under this authority must comply with the Statements of Authorization granted United and these carriers for code-share operations, along with any other conditions contained in those authorizations. Currently, United is authorized to serve France under third-country code-share arrangements with Lufthansa and British Midland.

Remarks: We find that, in the circumstances presented, approval of the carriers' requests is consistent with the public interest. Awards to the three carriers will increase the services available to travelers in the U.S.-Paris market, will increase competition in the U.S.-France market, and will ensure fuller use of the service opportunities available under the aviation agreement between the United States and France.^{11 12}

We also find that grant of Delta's motion for confidential treatment is in the public interest. Under Rule 12, the Department evaluates requests for confidential treatment in accordance with the standards of disclosure found in the Freedom of Information Act (FOIA) (5 U.S.C. Section 552(b)). We have reviewed the documents in question and have decided to accord the documents confidential treatment because we have determined that such information falls within the exemption under the Freedom of Information Act for proprietary information, 5 U.S.C. section 552(b), or their release would adversely affect the competitive positions of the an air carrier in foreign air transportation under 49 U.S.C. 40115, or would disclose CRS data or the international air traffic data filed by U.S. airlines.¹³

On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found United qualified to provide the New York-Paris services authorized.

We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

An electronic version of this notice is available on the World Wide Web at:

http://dms.dot.gov/reports/reports_aviation.asp

¹⁰ Although American and Delta, in their joint pleading of August 29, 2000, referred to a 120-day dormancy period, we find no basis to depart from our standard practice with respect to dormancy conditions.

¹¹ As a result of the awards here, one weekly frequency remains available for U.S. carrier services.

¹² All of the carrier applicants as well as certain of the interested civic parties filed responsive pleadings to the original applications in this proceeding, anticipating the need for the Department to select among the proposals filed. However, as a result of our determination that it is no longer necessary for us to engage in comparative selection procedures, we have not addressed the arguments made in these earlier pleadings. In this regard, we have also terminated the proceeding instituted in Docket OST-2000-7628.

¹³ Our policy regarding the disclosure of CRS marketing, booking, and sales data relating to international operations is stated in 14 C.F.R. Section 255.10. Disclosure of international service segment data and passenger origin and destination data is limited in accordance with 14 C.F.R. Section 241.19-6 and 241-19-7.

U.S. CARRIER
Standard Exemption Conditions

In the conduct of operations authorized by the attached notice, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration (FAA), Regulations, including all FAA requirements concerning security; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.

ACTION: Notice Granting U.S.-France Authority in
the *U.S.-France Frequency Allocation Proceeding*
(Docket OST-2000-7628)

Paul L. Gretch
Director, Office of International Aviation

Susan L. McDermott, Deputy Assistant Secretary
for Aviation and International Affairs

MAY NEED THIS, MAY NOT.

[Applications of American Airlines, Inc., filed 6/30/2000, and supplemented 7/18/2000;
Delta Air Lines, Inc., filed 5/26/2000, and supplemented 7/19/2000;
United Air Lines, Inc., filed 5/17/2000,¹⁴ and supplemented 7/18/2000 (frequency allocation);
United Air Lines, Inc., filed 4/24/91 (exemption request)]

¹⁴ United accompanied its application with (its third motion) for immediate action (exemption request).